



Paper No. 12

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**DIRECTOR OFFICE
TECHNOLOGY CENTER 2600**

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In re Application of
Ivan Bachelder, et al.
Application No. 09/127,676
Filed: July 31, 1999
For: METHOD FOR REFINING GEOMETRIC
DESCRIPTION MODELS USING IMAGES

DECISION ON PETITION TO
WITHDRAW HOLDING
OF ABANDONMENT

This is in response to the first petition filed February 26, 2001 and the second petition under 37 CFR 1.137(a) filed February 01, 2002, to withdraw the holding of abandonment of the above-identified application.

This application is in an abandoned status for failure to respond in a timely manner to the non-final Office action mailed on April 27, 2000 which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on December 22, 2000.

Petitioner asserts that the non-final Office action mailed April 27, 2000 was not received. In the absence of any irregularity in the mailing of the Office action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the record indicates that the Office action was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office action on the part of the United States Patent and Trademark Office.

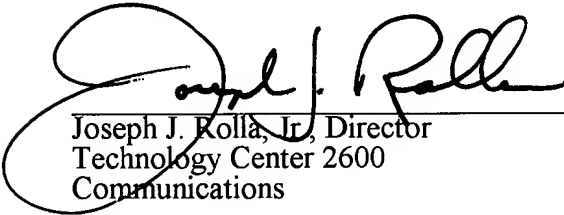
In support of the petition, the petitioner has submitted copies of the docket records where the non-received Office action would have been entered had it been received. Furthermore, the practitioner has provided the requisite statement with the petition stating that the file jacket and docket records have been searched by practitioner and that the Office action was not received.

The petitioner has made a sufficient showing of non-receipt of the non-final Office action based upon the docket records submitted and upon the statement from the practitioner. Accordingly, the application was not abandoned in fact.

The first petition filed February 26, 2001 is **GRANTED**.

The second petition filed February 1, 2002 is **DISMISSED AS MOOT**.

Although the first filed petition requests re-mailing of the non-received Office action, an amendment filed May 29, 2001 which is responsive to the April 27, 2000 Office action has been entered in the file. It is apparent that applicant has received a copy of the Office action mailed April 27, 2000. Therefore, the application file is being forwarded to the examiner for appropriate action responsive to the May 29, 2001 amendment in due course.



Joseph J. Kolla, Jr., Director
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Communications